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No. 94-1988

In The

Supreme Court of the United States

October Term, 1994

CAMPS NEWFOUND/OWATONNA, INC.,

Petitioner,

v.

TOWN OF HARRISON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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STATEMENT

Petitioner challenges the constitutionality of a 38 year old Maine statute which directs municipalities to grant property tax exemptions to certain types of charitable institutions and not to others.[1] The statute, Maine Rev. Stat. Ann. tit. 36, § 652(1)(A)(1) (West Supp. 1994) (hereinafter sometimes referred to as the "exemption statute"), sets up a kind of *quid pro quo*: Relief from property taxes used by municipalities to pay for police, fire protection and other services in return for charitable services to Maine people. Specifically, the exemption statute addresses three categories of Maine non-profits: 1) Those that serve principally Maine residents – they get a full exemption; 2) those that serve principally non-residents but charge only a nominal fee for their services – they receive up to $50,000 in property value exemption; and 3) those that serve principally non-residents and charge more than a nominal fee for their services – they receive no exemption.[2] No claim has been made in this case concerning the fact that the exemption is limited to Maine non-profit corporations.

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[1] Supreme Court Rule 29.4(c) provides that, in any proceeding before the Court challenging the constitutionality of state law, the initial pleading or paper shall recite that 28 U.S.C. § 2403(b) may apply, and shall be served on the state attorney general. It does not appear that Petitioner has complied with this Rule.

[2] Since the statute uses the term "principally," non-profits can serve many non-residents and still qualify for the full exemption.

The Petitioner, Camps Newfound/Owatonna Inc. ("Camps"), is a Maine non-profit corporation which operates a 180 acre summer camp on the shores of Long Lake in Harrison, Maine.[3] Camps accepts exclusively boys and girls of the Christian Science faith and is the only Christian Science summer camp in New England. Camps offers an array of recreational opportunities – boating, swimming, games – as well as religious instruction. Average enrollment is about 250 campers per summer. During the years 1989 through 1992, approximately 95% of the campers were out-of-state residents. These campers paid fees ranging from $370.00 per week in 1989 to $445.00 per week in 1992 to attend Camps, except to the extent that they received scholarship aid. Camps' annual operating budget is about $640,000.

Camps delivers its services only within Maine. While it may advertise its facility and recruit campers from other states, its product is delivered wholly intra-state. It is of further importance that the exemption statute pertains to real and personal property which has a fixed location in the Town of Harrison and which is taxed at its fair market value. It is not an exemption from a tax placed upon "camper days" or the campers themselves.

Camps pays about $20,000 per year in property taxes. By letter to the Harrison Town Manager dated April 15, 1992, Camps demanded a tax refund for the years 1989 through 1991 and a continuing tax exemption pursuant to

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[3] Although not part of the record, the following information may be of interest to this Court. The Town of Harrison is located in Cumberland County, about 40 miles northwest of Portland. Its 1990 population was 1,951. *Maine Register* (1994).

the exemption statute. Camps acknowledged in that letter that more than half of their campers are out-of-state residents and further acknowledged that the statute does not allow exemptions for such camps. Nevertheless, Camps claimed entitlement to an exemption because the statute is unconstitutional. The Board of Assessors responded that they were not empowered to decide upon the constitutionality of the statute and they denied the exemption request. (The Respondents stipulated in the course of this litigation that, but for the statutory provision at issue here, Camps would qualify for a full exemption as a charitable institution.)

Camps brought a two count complaint in the Maine Superior Court challenging the denial of the requested exemption. The parties, after written discovery, stipulated to certain facts and agreed that the parties' Cross-Motions for Summary Judgment were in order for hearing. On March 2, 1994, the Superior Court granted summary judgment to Camps on the first count of its Complaint, finding that the exemption statute violates the Commerce Clause. U.S. Const., art. I, § 8, cl. 3. The Superior Court rejected Camps' Equal Protection challenge. U.S. Const. amend. XIV. (The second count of the Complaint had been dismissed earlier. It alleged a violation of 42 U.S.C. § 1983.)

The Town of Harrison appealed the Superior Court decision to the Maine Supreme Judicial Court, sitting as the Law Court (hereinafter "Law Court").[4]

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[4] Camps refers to the Superior Court as the "Trial Court." There was no trial of facts before the Superior Court. Further,

This was the second time that the Law Court was faced with a constitutional challenge to the exemption statute. In *Green Acre Baha'i Institute v. Town of Eliot*, 159 Me. 395 (1963), the Law Court upheld the same statutory provision, stating:

> We cannot say that it is unreasonable for the State to require the ordinary and normal support of government when a corporation as here principally benefits nonresidents, and to remit taxes when benefits accrue to our own residents. Exemption from tax places an equivalent burden on the remaining taxpayers. Loss in tax revenue from exemption must be balanced by increased assessments on others.
>
> In our view, the denial of exemption to the property of a Maine benevolent and charitable corporation "in fact conducted or operated principally for the benefit of (nonresidents)" is a constitutional exercise of legislative power.

Id. at 399.

The Law Court in the instant case reversed the Superior Court with respect to the Commerce Clause analysis and reaffirmed its holding in *Green Acre* with respect to the Equal Protection Clause. It also held that the exemption statute does not violate the Privileges and Immunities Clause. U.S. Const. art. IV, § 2, cl. 1. (655 A.2d 876 (Me. 1995); Pet. App. A.)

Camps frequently quotes from the Superior Court opinion and compares it to the Law Court opinion. The issue, however, is whether the Law Court's opinion conflicts with opinions of this Court.

Regarding the Commerce Clause, the Law Court determined that the exemption statute "regulates even-handedly with only incidental effects on interstate commerce" and, therefore, that it should be analyzed under the "flexible approach" of *Brown-Forman Distillers v. N.Y. Liquor Authority*, 476 U.S. 573 (1986). Because the exemption statute serves a legitimate state interest and because its burden on interstate commerce does not clearly exceed the local benefits, the Law Court found that the exemption statute meets the *Brown-Forman* test. (Pet. App. 6a.)

ARGUMENT

SUMMARY

Camps asks this Court to exercise its discretionary authority to grant a writ of certiorari because the Maine Law Court's opinion "squarely conflicts with this Court's Decisions." (Pet. 7) *See* Supreme Court Rule 10.1(c). In fact, no opinion of this Court has applied a Commerce Clause analysis to invalidate a state statute like that at issue here and, therefore, there is no direct conflict with applicable decisions of this Court.

The opinions of this Court which come closest to addressing the factual and legal issues presented here, including the constitutionality of statutes that discriminate on the basis of nonresident status, have involved analysis under the Privileges and Immunities Clause and the Fourteenth Amendment. *See, e.g., Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371 (1978) (Montana elk hunting license fee differential between residents and non-residents does not violate the Privileges and

Immunities Clause or the Fourteenth Amendment Equal Protection Clause); *WHYY, Inc. v. Glassboro*, 393 U.S. 117 (1968) (New Jersey statute denying nonprofit corporation real estate tax exemption based on out-of-state incorporation violates Fourteenth Amendment); *Board of Education of Kentucky Methodist Church v. Illinois*, 203 U.S. 553 (1906) (upholding under the Privileges and Immunities and Equal Protection Clauses an Illinois statute requiring charity to be exercised within Illinois in order to qualify for an exemption). However, Camps has not sought review of that portion of the Law Court opinion which upholds the Constitutionality of the statute under the Fourteenth Amendment and the Privileges and Immunities Clause. (Pet. App. 12a) Instead, Camps seeks review only of the Commerce Clause issues, apparently conceding that the exemption statute passes muster under the Fourteenth Amendment and Privileges and Immunities Clause.

Camps cites to numerous "dormant Commerce Clause" cases, especially *Chemical Waste Management v. Hunt*, 112 S.Ct. 2009 (1992), to support its assertion of a conflict between the Law Court's decision and the precedents of this Court. Specifically, Camps cites *Chemical Waste Management* in support of its argument that the Law Court should have applied the "strictest scrutiny" test to the exemption statute instead of the "flexible approach" of *Brown-Forman Distillers, supra*. However, *Chemical Waste Management* and the other opinions cited by Camps are distinguishable on fundamental points and do not control here.

Camps asserts that the Law Court's decision, "if undisturbed," will probably lead to enactment of

numerous state and municipal measures that will deny tax exemptions to nonprofits serving out-of-state residents. (Pet. 6) In fact, Maine's exemption statute was enacted in 1957 and was first upheld by the Law Court in the face of Constitutional challenge in 1963. *Green Acre Baha'i Inst., supra*. This did not lead to a stampede of states and municipalities enacting similar legislation. Further, Camps' argument ignores the fact that states are free to deny property tax exemptions to all nonprofit organizations. If maximization of revenue is the goal of state and local government, as Camps suggests, that could have been accomplished long ago.

The Law Court was correct in applying the "flexible approach" in its Commerce Clause analysis of the exemption statute. However, even if "strictest scrutiny" were applied here, the exemption statute would survive under the application of that analysis by this Court in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 63 U.S.L.W. 4233 (April 4, 1995).

Camps has failed to make a persuasive argument under the reasons enumerated in Supreme Court Rule 10, or under any other recognized reasons, for granting a writ of certiorari in this case.

1. *Chemical Waste Management* and similar opinions of this Court are not precedent demanding that "strictest scrutiny" be applied.

Camps relies upon *Chemical Waste Management, supra*, as the foundation for its argument that the Law Court's use of the "more flexible" balancing test rather than the

"strictest scrutiny" standard in analyzing the Maine statute was erroneous. (Pet. 7) (A number of other cases are cited in Pet. 7, nt. 15) This reliance is misplaced.

Chemical Waste involved a fee placed by the State of Alabama upon hazardous waste entering the state in the stream of interstate commerce. The clear intent of the fee was to discourage large hazardous waste landfill operators from importing waste from other states. (In fact, only one operator was large enough to be im; acted by the fee.) The effect of the fee upon landfill operators was direct and substantial. If they chose to import the waste, they would pay fees that they would not pay for accepting domestic waste. This Court analyzed the Alabama measure under the strictest scrutiny test and found that it violated the dormant Commerce Clause. This Court observed that, while Alabama proffered a number of valid reasons for discouraging the importation of hazardous waste, it could cite no valid reason to discriminate on health and safety grounds between domestic and imported hazardous waste; both are toxic and potentially harmful to humans and the natural environment. 112 S.Ct. at 2014, 2015.

Camps argues at length that the Maine exemption statute suffers from the same Constitutional infirmities as the Alabama fee on imported hazardous waste. (Pet. 8 - 12) Camps asserts that the Law Court began "its effort to avoid the *Chemical Waste* test with its flat, though unaccountable, rejection of the established equivalence of tax exemptions and taxes." (Pet. 10) The Law Court well understood the differences between real/personal property tax exemptions for charitable organizations and exemptions from excise and sales taxes paid by for-profit

organizations. Indeed, it is the failure of Camps to recognize those differences that have led it to mistakenly argue that the strictest scrutiny test of *Chemical Waste* applies here.

The purpose and effect of tax exemptions for non-profit *vis-a-vis* for-profit organizations is of key importance. The purpose of granting exemptions to charitable organizations, whether it be exemption from property tax or from sales tax, is to allow the organization to devote its financial resources to its charitable goals. The effect is to promote the "good" being done by the charity. This was explicitly recognized by the Law Court in this case:

> The purpose of any tax exemption for charitable institutions is to relieve the charity from the burden of taxes on their limited budgets and thereby to recognize and promote the public benefits that they provide.

(Pet. App. 6a.) The purpose of granting exemptions to for-profit organizations is to provide them with a subsidy. The effect is to give them a competitive advantage over other organizations who do not qualify for the exemption, *e.g.*, out-of-state producers. It is this form of economic protectionism that violates the Commerce Clause. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984). This Court has never found the type of exemption at issue here to violate the Commerce Clause.

Municipal property tax exemptions are also different from excise and sales tax exemptions in how they impact taxpayers. Municipal property taxes are assessed at a rate of tax, usually expressed as dollars of tax per $1,000 of valuation. That rate is set each year based upon the

revenue which must be generated (budget) and the value of all real estate (and some personal property) in the municipality (grand list); budget = rate x grand list. When property is taken off the property list by way of exemption, the remaining taxable property must be taxed at a higher rate in order to meet the budgeted revenue goal. In other words, the non-exempt property taxpayers must "make up for" the dollars lost as a result of the exemption. Here, the non-exempt property owners in the Town of Harrison are called upon to shoulder the burden of taxes that would otherwise be paid by Camps, if it is tax exempt.

By contrast, if a product is exempted from an excise tax or a sales tax (both are a tax on the sale of a commodity), there is no automatic shifting of taxes to other products and their consumers. For example, the liquor excise tax at issue in *Bacchus Imports, Ltd., supra,* is unlike the property tax at issue here. When the Hawaii legislature enacted the exemption for domestic wine sales, it did not automatically thereby increase the rate of tax on all other wines and liquors.

Thus, there is no "established equivalence of tax exemptions and taxes", as Camps asserts (Pet. 8, 9), in the context of real/personal property taxation.[5] Camps' failure to recognize this is an important flaw in its Brief with respect to the applicability of *Chemical Waste.*

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[5] None of the cases cited by Camps in Pet. 9, nt. 21 involved an exemption from real property taxation.

2. No impact on interstate travel was demonstrated on the record. There is no intent to discourage interstate travel.

Camps argues that the exemption statute somehow discriminates against interstate travel and that this discrimination is a violation of the Commerce Clause. (Pet. 9.) Assumedly, the "travelers" to which Camps refers are their campers who reside outside Maine.

There are no campers before this Court. Further, the record developed before the Superior Court contains no evidence that the exemption statute impeded interstate travel to Camps or that Camps provides services that are necessary for interstate travel. (Pet. App. 7a).

To meet the challenge of finding articles of commerce in this fact pattern which would invoke the Commerce Clause, Camps cites *Heart of Atlanta Hotel, Inc. v. United States,* 379 U.S. 241 (1964) as support for the proposition that the boys and girls who travel to Maine to attend Camps are "unmistakably a part of interstate commerce." (Pet. 9, nt. 23). *Heart of Atlanta,* however, was a civil rights case examining the jurisdiction of Congress to enact the public accommodations law under its Commerce Clause authority. There, this Court found "overwhelming evidence that discrimination by hotels and motels impedes interstate travel." 379 U.S. at 253 (Travelers must have places to eat and sleep.)

Finding that the Commerce Clause provides a jurisdictional basis for Congress to enact public accommodations legislation is a wholly different analysis from

determining whether the dormant Commerce Clause prohibits a state from enacting a local property tax exemption. Respondents assume, *arguendo*, that Congress can, if it chooses, regulate virtually any area of American life based upon the courts' expansive reading of the Commerce Clause. *Cf. United States v. Lopez*, 63 U.S.L.W. 4343 (April 26, 1995). But, if that same expansive reading is applicable to the dormant Commerce Clause, intra-state commerce would almost cease to exist. The mere fact that persons cross state lines to purchase a good or a service does not automatically subject state action which affects the price paid for the good or service to dormant Commerce Clause scrutiny. *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 253 (1938) (taxation of a local business, which is separate and distinct from the transportation and intercourse which is interstate commerce, is not forbidden merely because the local business induces the transportation or intercourse).

Camps attempts in its Brief before this Court – as it did before the Maine courts – to use selected excerpts from the 1957 Maine House of Representatives floor debates on the exemption statute to show an illicit purpose behind enactment of the statute. (Pet. 6, 10.)

Camps' use of the legislative debates is contrary to generally accepted principles of statutory construction:

> References to motives of members of the legislature in enacting a law are uniformly disregarded for interpretive purposes except as expressed in the statute itself. The reasons which prompted various members to enact the law may be varied, conflicting and difficult to determine, and

> they may be unrelated to any consideration about the meaning of the statute.

2A Normand J. Singer, *Sutherland Stat. Const.* § 48.17 (4th Ed. 1984).

The United States District Court, District of Maine, has expressly rejected the notion that courts should examine legislative debates to discern illegal motives except in very limited circumstances which do not concern economic regulation or tax policy. In *International Paper Company v. Inhabitants of the Town of Jay*, 736 F.Supp. 359 (Dist. Me. 1990), Judge Carter refused to examine the alleged illicit motives of the town selectmen in drafting and proposing an ordinance to impose local environmental controls on industries. He wrote:

> Plaintiff argues . . . that the Court must strike down the Ordinance because of the illicit motives of the selectmen in commissioning the drafting of the Ordinance and proposing it. The Court holds that proper review of the Ordinance entails that the Court focus on the Ordinance itself. [*United States v. O'Brien*, 391 U.S. 367, 383 (1968); *Fraternal Order of Police Hobart Lodge No. 121 v. City of Hobart*, 865 F.2d 551 (7th Cir. 1988).] The Supreme Court in *O'Brien* noted that courts "will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." [*O'Brien*, 391 U.S. at 383.] The Court limits the potential scope of analysis out of respect for the democratic political process and because of the inherent difficulty of determining the motives of a collective body. *Fraternal Order of Police Hobart Lodge No. 121*, 864 F.2d at 554.

Id. at 364. The District Court goes on to acknowledge that in certain limited situations courts have looked to legislators' motives but notes that these "forays" have been confined to laws that infringe upon fundamental rights or that discriminate on invidious grounds. The exemption statute does neither.

This Court should disregard Camps' discussion of the floor debates. *See Conroy v. Aniskoff*, 113 S.Ct. 1562, 1567 (1993) (Scalia, J., concurring).

In any event, the Respondents contend that the floor debates reveal no impermissible discriminatory motive on the part of legislators. The motive was to protect local taxpayers from bearing unfair tax burdens.

3. Even if the strictest scrutiny test is applied, the exemption statute passes muster.

Camps argues that the Law Court should have applied the "strictest scrutiny" test and, in particular, should have employed the four part test first laid down by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).[6] The Respondents answer that, even if the exemption statute is analyzed under the *Complete Auto* test, the exemption statute passes muster.

As noted by the Law Court (Pet. App. 6a) and as explained above, Camps delivers its services only within

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[6] Camps actually discusses the use of the test in *Chemical Waste Management, supra.* (Pet. 7) However, Camps also states that "the trial court was incontestably correct both in its election of governing standard and in its application of that standard." *Id.* The trial court's standard was *Complete Auto.*

Maine. Further, the exemption statute pertains to real and personal property which has a fixed location in the Town of Harrison and which is taxed at its fair market value. It is not an exemption from a tax placed upon "camper days" or the campers themselves.

This Court recently reviewed an Oklahoma statute which placed a tax on bus tickets sold in Oklahoma for interstate travel. *Oklahoma Tax Commission v. Jefferson Lines, Inc., supra.* Applying the four part *Complete Auto* test, this Court upheld the statute.

Applying the same *Complete Auto* test, the Maine Superior Court in the instant case struck down the exemption statute because it failed the third part of the test, *i.e.*, that it not discriminate against interstate commerce. (Pet. App. 13a) However, when one applies the *Complete Auto* test, as interpreted in *Jefferson Lines*, one finds that the exemption statute in fact passes all four parts of the test.

The first part of the test, that the state tax have a substantial nexus to the taxing state, is clearly met. (Even though the exemption statute is an exemption from a local tax, the tax policy is set by the State of Maine.) The exemption relates to real and personal property within the state.

The second part of the test, that the tax be fairly apportioned, is also met. The exemption statute is both "internally consistent" and "externally consistent" because it pertains to a fixed item, real estate/personal property, that will never be taxed by another state. (The Maine Superior Court had no problem finding that the

exemption statute meets the second part of the test. (Pet. App. 13a))

The third part of the test, that the tax not discriminate against interstate commerce, was the source of the Superior Court's problem with the statute. (Pet. App. 13a) The Superior Court reasoned that the exemption statute makes it more expensive to operate camps which serve primarily out-of-state residents and that this places such camps at an economic disadvantage. Thus, it reasoned, it impermissibly discriminates against interstate commerce. This is similar to the argument advanced by the respondent in *Jefferson Lines*. Respondent there argued that the Oklahoma tax discriminated against out-of-state travel by taxing a ticket at the full 4% regardless of whether the ticket related to a route entirely within Oklahoma or to travel only 10% within Oklahoma. 63 U.S.L.W at 4240. This Court rejected that argument. In doing so, it observed:

> As with a tax on the sale of tangible goods, the potential for interstate movement after the sale has no bearing on the reason for the sales tax. (citations omitted) Only Oklahoma can tax a sale of transportation to begin in that State, and it imposes the same duty on equally valued purchases regardless of whether the purchase prompts interstate or only intra-state movement. There is no discrimination against interstate commerce.

Id.

With the exemption statute, the "tax" on real estate/personal property does not turn on whether there is a potential for, or there in fact is, interstate movement of

campers or other beneficiaries of the non-profit's service. It turns upon the residence of the beneficiaries. To illustrate, a Maine non-profit could operate from facilities in Maine, *e.g.*, a headquarters building, but deliver its charity primarily outside Maine. Although there is no impeded interstate travel, the Maine non-profit would fail to qualify for the exemption.

In the instant case, Camps chooses to operate in a manner that promotes interstate travel. But it is not that travel which is the "trigger" for the exemption statute. Thus, as with the bus ticket tax in *Jefferson Lines*, the potential for interstate travel by its customers has no bearing on the reason for the exemption. As the Law Court observed:

> If there is any impact on interstate commerce it is incidental; it is not the purpose of the exemption statute to affect the number of out-of-state campers attending summer camps within Maine.

(Pet. App. 6a)[7] Thus, the third prong of the *Complete Auto* test is met here.

The fourth part of the test, that there be a fair relation between the tax and the benefits conferred upon the taxpayer, is met here. The municipal services provided in return for local property taxes are more than just a benefit, they are necessities. It is beyond question that there is a fair relation between the taxes and the benefits.

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[7] This is in direct contrast to the fee in *Chemical Waste* which had the purpose and effect of keeping hazardous waste from entering Alabama.

Thus, the exemption statute would survive even if analyzed under the *Complete Auto* test.

CONCLUSION

For the reasons stated above, and on the basis of the further discussion of the facts and case law set forth in the opinion of the Law Court, the Petition should be denied.

Respectfully submitted,

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